

FILED BY CLERK

AUG 17 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0132-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
AMITY FRANCES ESBROOK,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2009116199001SE

Honorable Carolyn K. Passamonte, Judge Pro Tempore

REVIEW DENIED

William G. Montgomery, Maricopa County Attorney  
By Diane Meloche

Phoenix  
Attorneys for Respondent

Amity F. Esbrook

Goodyear  
In Propria Persona

H O W A R D, Chief Judge.

¶1 Petitioner Amity Frances Esbrook seeks review of the trial court's order summarily dismissing her petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 In CR2009-116199, Esbrook pled guilty to aggravated driving under the influence (DUI). She additionally pled guilty to aggravated DUI in CR2009-116202 and to two counts of aggravated assault in CR2009-125222. She was sentenced to an aggravated, six-year prison term for the DUI conviction in CR2009-116199, and to concurrent prison and jail terms on the other charges, with supervised probation to follow. Esbrook filed a notice of post-conviction relief listing each of the three cause numbers, and appointed counsel filed a notice stating he had reviewed the record but was “unable to find any claims for relief to raise in post-conviction relief proceedings.”

¶3 Esbrook filed a pro se petition for post-conviction relief, asserting she should have received a presumptive sentence based on various purported mitigating factors that had not been presented to the prosecutor during plea negotiations and she was “never allowed the opportunity for any kind of settlement conference.” She additionally filed a letter claiming her presentence incarceration credit had been calculated incorrectly. The trial court summarily dismissed her petition, concluding she was not entitled to additional presentence incarceration credit, her sentences were authorized by law, and any previously undisclosed mitigating factors “do not fit the requirements for newly discovered material facts outlined in Rule 32.1(e).”

¶4 On review, Esbrook claims her trial counsel was ineffective in failing to thoroughly or accurately present various mitigating factors and again claims she was “[d]enied [the] right to a settlement conference.” She also asserts her attorney should have requested a mental health evaluation and the state “[c]oerced” her into entering the

plea with “threats” of a greater sentence. But, Esbrook did not raise a claim of ineffective assistance of counsel in her petition for post-conviction relief, raising that claim for the first time in passing in her reply to the state’s response. Nor did she raise a claim of coercion. We do not address claims not raised properly in the defendant’s petition for post-conviction relief. *See State v. Lopez*, 223 Ariz. 238, ¶¶ 5-7, 221 P.3d 1052, 1053-54 (App. 2009) (declining to address issue first raised in reply); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (declining to address issue not presented first to trial court); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii).

¶5 And, even if we could construe Esbrook’s petition below as raising these claims, her petition for review—like her petition below—contains no citation to the record and is devoid of either citations to legal authority or any cognizable legal argument. Esbrook’s failure to provide adequate citations to the record or provide any legal argument whatsoever further justifies our refusal to accept review. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must comply with rule governing form of appellate briefs and contain “reasons why the petition should be granted” and either appendix or “specific references to the record”), (f) (appellate review under Rule 32.9 discretionary); Ariz. R. Crim. P. 31.13(c)(1)(vi) (briefs must contain argument and supporting authority); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules

governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002).

¶6 For the reasons stated, we deny review.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge